

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

KOJUAN MILES,

Plaintiff,

v.

BOBBY LUMPKIN, et al.,

Defendants.

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Case No. 6:20-cv-334-JDK-JDL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Kojuan Miles, a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition.

Before the Court is Defendants Bobby Lumpkin and Timothy Jones's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) and (6). Docket No. 12. Following the filing of this motion to dismiss, Plaintiff amended his complaint. Docket No. 24. Accordingly, on June 7, 2021, Judge Love issued a Report recommending that Defendants' motion to dismiss be denied as moot. Docket No. 26. No objections to this Report have been filed.

Because there have been no objections, the Court reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v.*

Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 26) as the findings of this Court. Defendants Bobby Lumpkin and Timothy Jones's motion to dismiss (Docket No. 12) is **DENIED** as moot based on the filing of the amended complaint.

Also before the Court is Plaintiff's motion for default judgment. Docket No. 29. In his motion, Plaintiff argues that Defendants' answer does not respond to some of the factual paragraphs in his amended complaint, therefore admitting the allegations of these paragraphs under Federal Rule of Civil Procedure 8(b).

Federal Rule of Civil Procedure 55(a) permits a default against a party when it "has failed to plead or otherwise defend" itself. *See Sun Bank of Ocala v. Pelican Homestead and Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir. 1989). Here, Defendants answered the amended complaint on May 28, 2021. Docket No. 25. As required by Rule 8(b), Defendants' answer admits or denies Plaintiff's allegations and states in short and plain terms their defenses to Plaintiff's claims. Because Defendants have answered, default judgment is not appropriate in this case. Accordingly, the Court **DENIES** Plaintiff's motion for default judgment (Docket No. 29).

So **ORDERED** and **SIGNED** this **28th** day of **July, 2021**.



A handwritten signature in black ink, reading "Jeremy D. Kernodle", is written over a horizontal line.

JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE